

## Statement in Opposition to SB 652 – November 5, 2013

Submitted by Bruce A. Timmons

First some history because I was on House staff when this legislation was enacted:

Immediately before 1978, the Court of Claims had a clerk and records in Lansing.

Circuit judges, who had the time, could volunteer, for a month. Actual trial time was much less.

Caseload began to exceed the availability of circuit judges willing to volunteer because their own dockets were also growing. The caseload was approaching the need for a full-time judge.

Lansing is the seat of government. The state agencies being sued have their principal office in Lansing. The assistant attorneys general who defend these cases have their offices in Lansing.

Lansing is also centrally located. Most citizens in this state live within a 2-hour drive of Lansing when they come to pursue their claim. That is not true for Grand Rapids or Detroit.

Ingham Circuit was a practical solution, not a political one. The bill was passed by a Democratic House, supported by a Democratic Attorney General, and signed by a Republican Governor to give court of claims cases to a court, a majority of whose judges were Republican.

I don't recall Ingham asking for the privilege. The task was given to them before Headlee. The number of judges was increased by 1. The Legislature annually contributes to the expense of the court of claims in the Judiciary Budget – \$186,900.00 for FY 2013-14, 2913 PA 59 (EHB 4328), Art. XII, Sec. 303.

We have 3 state trial courts. Why do we need a fourth trial court?

**Court of Appeals is NOT a trial court.** It is not equipped or structured to be a trial court. It hears arguments on legal issues – it does not take testimony. It doesn't have court reporters. Many of the judges were not trial judges. The courtrooms do not have space for a jury trial if the court of claims case can or should be joined with a related claim involving parties other than the state who are entitled to a jury. Joinder rules allow them to be tried at the same time by the same circuit judge.

Senate Judiciary heard the history of monetary claims against the state prior to 1978. That testimony was silent as to the real purpose of the bill. SB 652 expands the jurisdiction of the court of claims to include a "demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state ... notwithstanding another law that confers jurisdiction of the case to circuit court." Those additional matters have always been under the jurisdiction of the circuit court and not just limited to the Ingham Circuit. Have proponents informed you what those matters are? Beware.

The bill allows the court of appeals to refer a matter to a "Special Master" who could be an attorney, not a judge. Do we now want damage and injunctive actions heard by someone who is not subject to the election by the people? How does joinder of cases occur if the court of claims matter is assigned initially to a special master? The bill is a very vague and inconclusive about that.

Circuit court is accustomed to daily dockets and emergency petitions. The Court of Appeals hears matters a few days of each month and functions in 3-judge panels. It is not equipped for a longer proceeding of a single case that could disrupt already scheduled oral argument dockets.

If a party loses in the Court of Appeals, to what court does that party appeal? To the Court of Appeals (see page 1 of the bill). "What, I just lost there!" Now one might argue that the appeal would be heard by a different 3-judge panel, but 100% of the general public will see no difference – they will only see that the court to which they will appeal is the same one that just rejected their claim. Perception matters and in this instance, the bill can't and won't pass the smell test – to them it's rigged. →

SB 652 provides that judges assigned must come from at least 2 court of appeals districts. That suggests that someone expects 3 to come from one district, like Kent Co, and 1 favorable judge from Oakland. Why not have 1 judge from each district? Someone clearly does not want that possibility – it probably would be too great a risk that the judge from the district with Wayne County might get a particular case.

Remember the old admonition: Be careful what you wish for! SB 652 may become the most liberal legislation enacted this year. Why? Someday the worm will turn and Democrats will hold the reins of power. When that happens, business organizations and individuals asserting a claim against the state or challenging statutes and executive actions will find themselves before 1 of 3 judges from Wayne County or 1 from Lansing. Good luck!

In Senate Judiciary it was claimed that the bill would enable citizens to have their claims heard closer to home. The bill provides for just the opposite – that the hearing would be where the judge sits, not where the plaintiff resides. Given the scheme of assignment of judges, it is quite likely that a claimant from Wayne, Oakland, Macomb or St. Clair would be driving over to Grand Rapids for the hearing – closer to 3 hours away. That is not convenient to the litigant – nor, for that matter, to the agency official (if called upon to testify) or the assistant AG assigned to defend the state.

This bill is on a fast track and, respectfully, on the wrong track.

The public and special interests may not like some of the decisions that have been made by the Governor and Legislature over the past 3 years, but they do, perhaps begrudgingly, understand that those decisions are what policy-making branches of government are about and those who win elections get to determine policy.

But SB 652 does something different – it tampers with the court system to which challenges of those decisions may be brought and clearly attempts to bias the system against any threat of a legal challenge. This lets the government select the forum.

I would concur with proponents of SB 652 that there is more than a perception problem with the current arrangement, including the claim that one county of 3% of the population of the state should not have disproportionate role in determining legal challenges to state policy. The critics have a justifiable complaint. But two wrongs do not make a right.

I may have a better alternative. Not necessarily the best option because others with better understanding of the court system than I may have a more satisfactory one. My suggestion would be to provide for the assignment of circuit judges from around the state on a short-time basis, perhaps as an exchange with an Ingham judge, as part of the mix for hearing court of claims matters, even if expanded to include equity matters – similar to the functioning of the court of claims early in the 1970's. It addresses the concern that only Ingham judges hear these matters. It would not require a radical, illogical restructuring of the courts. It would retain the central location for records, staff, litigants, agency personnel, and AG attorneys.

If SB 652 were to become law as now written, it will prove to be an embarrassment down the road. It is also quite uncharacteristic for us Republicans who proclaim a healthy skepticism about government. This bill is not a citizen initiative. It is a product of **government, by government, for government.**

Thank you for your attention and patience.